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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket 92-266
	)	
Rate Regulation	)	

To the Commission:

COMMENTS ON VALUEVISION'S PETITION FOR RECONSIDERATION

Home Shopping Network, Inc. ("HSN"), pursuant to Section 1.429 of the Commission's rules, hereby submits these comments on the Petition for Reconsideration filed by ValueVision International, Inc. in the above referenced proceeding.[1/] HSN is a television and cable television home shopping network that currently delivers programming on cable systems serving approximately thirty million subscribers. To the extent, however, that HSN may consider the use of commercial leased access in the future, HSN believes that the Commission should consider revising the method by which cable operators are required to calculate the maximum

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1/ Section 1.429 of the Commission's rules provides an opportunity for interested parties to file an opposition to a Petition for Reconsideration. This filing comments on, but is not primarily an opposition to, the ValueVision Petition for Reconsideration. HSN therefore respectfully requests that the Commission consider these comments at the same time it considers any oppositions filed in this proceeding.

reasonable rates they may charge leased access programmers. HSN respectfully submits an alternative approach which may merit further Commission analysis.

I. Home Shopping Programmers Should Not Be Treated as a Separate Category for Determining Maximum Reasonable Rates.

Over the years, HSN has consistently sought equitable and content-neutral treatment from the Commission for the home shopping category of programmers and broadcasters. HSN has never sought special treatment. It was, therefore, a disappointment when the Commission created a third programming category to be used by cable operators in determining leased access rates for home shopping services. Beyond injecting unnecessary complexity into what is an already complicated process, HSN does not believe that the Commission should create a pricing scheme which erects artificial economic barriers for home shopping programmers with regard to these channels. Neither, however, are we encouraging the Commission to create a special and significantly lower fee for home shopping programmers than that available to programmers in other content categories.

In keeping with HSN's desire for equitable and content-neutral regulation -- and in contrast with ValueVision's proposal[2] -- HSN recommends that the Commission require operators to treat home shopping programmers as part of an "all other" non-pay category, and calculate leased access rates in a manner comparable to other non-pay programmers. For example, if a subscriber pays $13.25 per month to receive 25 programming services (including HSN) on an expanded basic lineup with 85% penetration, that subscriber is theoretically paying $.45 to receive each service. For all "expanded basic tier" programmers, the $.45 implicit fee would be reduced by the amount paid by the operator to the programmer as monthly per subscriber payments (for example, if the operator pays ESPN a $.25 per subscriber fee, the implicit fee for ESPN is $.20). However, because the operator typically does not pay the home shopping programmer for carriage, HSN proposes that the $.45 implicit fee be reduced for home shopping format services by the lowest per-subscriber fee paid by the operator for a non-pay, satellite-delivered cable programming service on the same tier of service as HSN. For example, if the cable operator's lowest monthly programming fee is $.05 per subscriber, the implicit rate for HSN would be $.40.[3] This seems eminently fair and reasonable, protects the

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2/ ValueVision argues that cable operators should charge all home shopping programmers an "explicit" fee consisting of 5% of sales revenues. In addition, ValueVision argues strenuously that there should be no additional per-subscriber fee added to this percentage. ValueVision Petition for Reconsideration at 3.

3/ If, however, an operator carries a cable programming service with no monthly fee, HSN's implicit fee would remain at $.45.

cable operator's interests and, while allowing access at commercially reasonable rates, does not create a content-related "extra" price break.

In contrast with the ValueVision proposal, HSN's recommendation is consistent both with the Commission's highest implicit fee construct and HSN's long-held position that home shopping programmers should receive content-neutral treatment comparable to other broadcasters and programmers. Moreover, as will be demonstrated below, ValueVision's proposal represents a grossly oversimplified approach to pricing access channels that will penalize cable operators and create incentives for home shopping programmers to migrate to leased channels.

II. An "Explicit" Fee of Five Percent of Sales Revenues for Home Shopping Programmers is Unrealistically Low and Does Not Reflect the True Value of the Channel to the Cable Operator.

HSN disagrees with ValueVision's position that the home shopping category should be exempt from the implicit fee calculation applicable to all other programmers.[4] Beyond the philosophical question, however, HSN takes serious issue with ValueVision's belief that a straight 5% figure is at all representative of a true "explicit" fee for the category. ValueVision's assessment is deficient in two respects.

4/ As discussed above, HSN believes that all non-pay programmers, including home shopping networks, should receive equal treatment from a cable operator under these rules and be charged a rate equal to the highest implicit fee determined for that system (which, for home shopping programmers, incorporates a deduction for the cost of programming based on the lowest monthly programming charge paid by the operator).

First, ValueVision seriously mischaracterizes the compensation that cable operators currently receive for carriage of home shopping networks. In its last fiscal year, for example, HSN paid many cable operators significantly more than 5% of the revenues generated from sales within their franchise areas, due to the payment of marketing incentives and other payments required by its affiliation agreements. Contrary to ValueVision's belief that "QVC and HSN will not be able to reduce their cable carriage costs by switching to leased access," HSN submits that ValueVision's artificially low price of 5% would be perceived as an extremely favorable rate and a powerful incentive for home shopping networks to abandon their current outlets and migrate to commercial leased access channels.

Second, ValueVision's proposal that cable operators utilize a 5% of sales revenue figure, rather than an actual per-subscriber/per-month amount based on other shopping networks, is unfair to cable operators (and other home shopping networks) in several ways. Under the Commission's highest implicit fee formula, a cable operator is entitled to recapture the value of its cable channel. Operators have traditionally analyzed and will continue to analyze the value for a channel on the basis of the amount of actual revenue the channel might earn. Requiring an operator to lease channel capacity in exchange for 5% of some unknown (and probably low) sales figure will wreak havoc with an operator's ability to engage in meaningful financial planning. More seriously, such a policy would require operators to subsidize lower revenue home shopping networks until they establish themselves in the marketplace and generate the sales revenues necessary to produce a fee at least equal to the highest implicit fee.

Under ValueVision's formula, a cable operator could receive very little compensation for carriage of the ValueVision service, certainly well below what it would value the channel if it were able to lease it to a non-home shopping service. As stated above, HSN encourages the Commission to avoid creating artificial barriers or incentives for home shopping programmers to use commercial leased access channels.

III. The Commission Must Reject ValueVision's Proposal That Leased Access Channels Be Provided on a First-Come, First-Served Basis.

ValueVision's recommendation that programmers be afforded access to leased channels on a first-come, first-served basis is unworkable, unfair and must be rejected. According to ValueVision, this approach is consistent with legislative intent because it would prevent operators from considering the content of, or exercising editorial control over, leased access programming.[5] ValueVision apparently believes that, without this simplistic priority scheme, cable operators will impermissibly look to content as a means of allocating scarce leased access channel capacity.

HSN's experience with cable operators, however, leads it to expect the opposite result; operators tend first and foremost to evaluate the revenue potential of a leased access applicant (or the applicant for any channel), irrespective of content. In

5/ ValueVision Petition at 13.

fact, the Communications Act of 1934, as amended, requires an operator to establish prices, terms and conditions "which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system."[6] In contrast, ValueVision's proposal would reduce an operator's ability to enter into satisfactory leased access deals to simply yelling "next in line." This cannot have been what Congress contemplated when it prohibited operators from evaluating or controlling editorial content.[7]

IV. Conclusion.

HSN submits that the Commission's new rules on leased access channel rates should give home shopping programmers neither special advantages or special disadvantages with respect to other cable programmers. The rules should be devised to create a dollar fee for a cable channel that is consistent with the dollar revenues

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6/ 47 U.S.C. § 532(c)(1) (emphasis added).

7/ ValueVision also fails to explain how an operator is to determine which applicant was "first in line." Should the operator grant priority to the programmer which first contacted the operator, filed an application, accepted the operator's terms and conditions, executed an agreement, or was prepared to go on the air? While the apparent simplicity of ValueVision's proposal is appealing, upon closer analysis, the scheme will create more disputes than it will avoid.

cable operators now receive from programmers with which they have entered into arm's-length affiliation agreements.

Respectfully submitted,

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AFFIDAVIT

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I, Alan H. Gerson, do hereby state that I am Executive Vice President of Home Shopping Network, Inc. I have [illegible] the attached Comments [illegible]

CERTIFICATE OF SERVICE